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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,004	11/12/2003	Alfred J. Bilotti	PAT-1461-CON	6539
7590	05/03/2004		EXAMINER	
Law Offices of Raymond Sun 12420 Woodhall Way Tustin, CA 92782			SAWHNEY, HARGOBIND S	
			ART UNIT	PAPER NUMBER
			2875	
DATE MAILED: 05/03/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/706,004	BILOTTI, ALFRED J.
	Examiner Hargobind S Sawhney	Art Unit 2875

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 12 November 2003.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 11-16 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 11-16 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 11/12/2003.
4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
5) Notice of Informal Patent Application (PTO-152)
6) Other: ____.

DETAILED ACTION

1. The preliminary amendment filed on November 12, 2003 has been entered.

Accordingly:

- Claims 1-10 have been cancelled;
- New claims 11-16 have been added.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 10-16 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 7-10 of U.S. Patent No. 6,659,616 B1. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following reasons.

Subject matter claimed in the instant application is disclosed and covered in the Marsh (U.S. Patent No. 6,135,620), since Marsh (U.S. Patent No. 6,135,620) and the instant application are basically claiming common subject matter as follows:

Instant Application	References: U.S. Patent No. 6,659,616 B1	Discussion on differences and additional References
Claims 11-13	Claim 7	Substantially identical, Claim 7, lines 1-17
Claim 14	Claims 7 and 8	Substantially identical, Claim 8, lines 1-4
Claim 15	Claims 7-9	Substantially identical, Claim 1, lines 4-7 and 13-16
Claim 16	Claim 7, 8 and 10	Substantially identical, Claim 10, lines 1-3

It would be have been obvious to one of ordinary skill in the art at the time of the invention to meet the limitations of claims 11-16 with the features recited in Claim 7-10 of U.S. Patent No. 6,659,616 B1.

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Kuelbs (U.S. Patent No. 6,612,713 B1

Each of the above-indicated prior arts discloses a patio umbrella assembly comprising some of the claimed features claimed by the applicant.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hargobind S Sawhney whose telephone number is 571-272-2380. The examiner can normally be reached on 6:15 - 2:45.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on 571-272-2378. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-93067724 for regular communications and (703) 872-9306 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-2956.

HSS

April 24, 2004



THOMAS M. SEMBER
PRIMARY EXAMINER